IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7177 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HCL HEWLETT PACKARD LTD. - Petitioner(s)

Versus

RUKSHANA P CHAWNA - Respondent(s)

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Appearance :

MR JV JAPEE for Petitioner No(s).: 1.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 27/06/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 09.06.1999 passed by the Labour Court, Ahmedabad in

Reference (LCIDAT) No.168 of 1997, whereby the said Reference was allowed.

2.0 The brief facts of the case are that the respondent herein was working as a Receptionist-cum-Telephone Operator with the petitioner Company. It is the case of the petitioner that the respondent had sent a leave application with medical certificate through her father on 14.04.1994 requesting for sanctioning leave for a couple of days on account of her ailment. Thereafter, she had never reported for duty.

2.1 It is the further case of the petitioner that the respondent instead of reporting for duty had sent a demand notice dated 22.04.1994 through her advocate inter alia alleging that her services were terminated by the petitioner Company w.e.f. 19.04.1994. The petitioner replied to the said notice and stated that they had not terminated her services. The respondent, however, continued to remain absent and did not reported for duty.

2.2 The respondent filed a complaint before the Labour Commissioner claiming reinstatement and other reliefs, which was ultimately referred to the Labour Court, Ahmedabad, for adjudication by way of a reference being Reference (LCA) No.168 of 1997. The Labour Court by impugned order allowed the said reference of the respondent. Hence, this petition.

3.0 By order dated 08.05.2000, this Court had modified the ad-interim relief granted earlier to the effect that the petitioner shall reinstate the respondent in service on or before 14.06.2000 and to pay full wages w.e.f. 09.06.1999

to till the date of his actual reinstatement within a period of one week from the date of reinstatement.

4.0 Mr. J V Japee learned advocate for the petitioner has submitted that pursuant to the above directions issued by this Court, the respondent has been reinstated in service and has also been paid salary as directed by this Court. Learned advocate has submitted that the Labour Court, while considering the question of back wages, has not considered the fact that the respondent had voluntarily abandoned the work and has wrongly granted back wages without assigning any reasons.

5.0 Ms. Sangita N Pahwa learned advocate for the respondent has submitted that in the year 1997, the respondent had even shown her willingness to resume duty, but, was not permitted to do so by the petitioner, and therefore, the respondent is entitled for back wages.

6.0 I have heard learned counsel for the parties and perused the documents placed on record. Since the respondent is already reinstated in service, the question which is now required to be considered by this Court is on the aspect of back wages. It is to be noted that the respondent, after submitting her leave report, had not resumed her duty. Moreover, the petitioner had even replied to the legal Notice of the respondent by stating that they have not terminated her services. Hence, it is clear that the respondent had voluntarily opted to not resume her duties. In my opinion, the Labour Court has committed grave error in awarding full back wages since the respondent herself had not resumed the duty.

7.0 Moreover, in view of the principle laid down by the Apex Court that a workman shall be entitled for wages only if he has worked for the said period, the impugned order of the Labour Court granting full back wages to the respondent is required to be quashed and set aside.

8.0 In above view of the matter, this petition is partly allowed. The impugned order of the Labour Court as regards directing the petitioner to reinstate the respondent with continuity of service is confirmed and the direction as regards awarding full back wages to the respondent is quashed and set aside. It is clarified that the petitioner shall implement the procedure for continuity of service, if it is not implemented so far, within a period of one month from today and shall also pay all the benefits accruing thereto, within the aforesaid period. With the above direction, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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